

**Executive Committee Minutes,
Thursday, June 16, 2005; (Submitted 7/13/05)
(Recorded and submitted by Goldie Caughlan, NOSB Secretary)**

NOSB Executive Committee Members: Present - James Riddle, Kevin O'Rell, Goldie Caughlan, Andrea Caroe, Dave Carter, and Rose Koenig; Absent – Gerald Davis, Nancy Ostiguy, George Siemon

Other NOSB Members on call: Bea James, Julie Weismann

NOP Staff Present: Barbara Robinson, Arthur Neal, Keith Jones, Katherine Benham,

1. Call to Order: The Chair called the meeting to order at 12:05 EDT.

2. Review, Approval of Agenda, and Secretary's Report:

Because there has been insufficient time to respond to Draft Minutes of the May 26 EC meeting, review thereof and request for approval will be considered at the July EC meeting. KB announced that transcription of the November 2004 EC minutes are nearly done, and that the February and March minutes summaries are still being considered by AN.

3. Chair's Report: JR: No report will be given today, saving time for other items on agenda. Committee chair updates will take place in the context of discussing the August Board meeting ; however if necessary, and sufficient time, added reports may be forthcoming.

4. NOP Issues/Update: BR discussed and reported on the court's final ruling in Harvey v. Johanns. BR had previously sent a summary by e-mail to all NOSB members. The court's order has not yet been posted, and if not available by tomorrow, BR will have it made into a PDF file and forwarded to the full board. A notice is being posted in the FR announcing it is on the website, and the declaratory judgment on 606. We have work to do, determining how to handle 605 and what to do about rule making.

Certainly, August's NOSB meeting agenda is very full, but BR says the main attention really ought to be: to concentrate on new materials; what do about 605; 80/20 is gone for all intents and purposes, and where do we proceed from here? Certainly, sunset and taking of public comment on those things are all pressing, but the August meeting cannot be just 'business as usual.' Clearly the NOSB is aware of this as well. BR urges members to check schedules now for October or early in November for another meeting. Next year will also require a early meeting, with ample listening sessions. We jointly have a very heavy work load, heavy, important issues, and we must come together, focus and figure out what to do.

On the crop processing docket, because of the lawsuit, all the materials that would go under 605 will need annotating as allowed only for use in made with, even though there are two more years to operate under the existing rules. Clearly it would be inappropriate to proceed otherwise. So that is pulled and all lmaterials will be reannotated and published appropriately to comply.

Remember too, this affects synthetics used in post-harvest handling. That is why August is so important for us to work together immediately on it. We must do our best to avoid flare-ups, hurt

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feelings, and simply move on. The Sunset docket should be on the way to publishing in the FR, probably this week. In any event Sunset expires things in 2007. We have to publish final rules within a year. We will not change the Sunset docket. We are constructing it as template, for continuing use every single year now, creating a model for a process.

But as to materials review under sunset, we must confront the issue, as Rose has pointed out. But let it get published and get ready for August. After all, we only just got the court decision last week, and we are all trying to deal with it and strategize. August is a critical meeting. We must hear fully from the public on this in August. We all need to think seriously what makes sense now. Then as we clarify the issues, we must all sit down and have conversations together, and figure out what is the best way to do rulemaking to deal with the situation. But we need to leave the Sunset docket alone.

AN: Livestock, as we discussed with the Livestock Committee, is nearly finalized for AMS clearance. We've addressed most major kinks, with the exception of those six – and we are working on the regs. The discretionary language with FDA is not yet finalized. But basically we are out of the woods with the majority of substances recommended, the excipient recommendations. Not sure if a snag is possible with FDA as yet. We Have noted OMRI comments and FDA has similar concerns, recommending blanket allowance of excipients, and it would help to link to GRAS or other lists. I didn't change your (livestock) recommendation, but it could change with FDA. As we know, GRAS items have been safety evaluated, so that's a partial review. But right now, its just excipients. JR: if we get feedback with that language and it is consistent with the intent of the board, could you run it by the Livestock and board? AN: I can run it by the Livestock Committee, definitely. What excipient recommendation does is potas sorbate issue as preservative, so it is one material FDA did not approve as a drug -- but covered as an excipient. The board recommended it as a preservative in aloe formulations – so that is tricky. JR: also it was for one use of calcium propionate. RK: if GRAS listed, these would be under that however, so that's progress

AN: The contract officer says that Virginia Tech has not accepted the funds as allocated, and not agreed to contract terms, and want a specific number of substances to be stated that they must review within a given time frame – but we don't do that. But with Sunset we need to exhaust the funds allocated so we don't lose the money necessary to supply substances re: sunset reviews. Unfortunately, the money cannot be reallocated to any other contractors. But considering Sunset, there may be a number of materials that need additional reviews, to update them, and it can be used this way and the funds not lost. RK: Geo and Kevin supplied some, and NO is back, (though not on today's call) so I'll get some more requests there maybe. Is it the new or original contract terms? AN: The new terms – and questions to ICF if any there are any questions. And there can be some that were not mentioned by committees – whatever. \$100 thousand dollars is on the line, and they will charge on an hourly rate, with no cap per substance.

AN: I'm looking through the TAPS from 1995-96 especially, and wherever they were not comparable to what is required now, we'll begin to issue requests to VT. This type of work from them, and then the critical items from the other contractor. I met with ICF today, and they are willing to assist us any way possible. If their demand is increased they will respond by increasing

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their staffing if/as necessary, in order to meet our requests. We had a conversation yesterday about the last few evaluations needing more, and they think with about 15 days they could complete the sufficiency needs – those three, chitosan, sucrose octanate esters (both livestock and crops). And as to the lime mud, I have talked to Woven egg, and she is modifying after receiving the NOP comments, and hopefully by the end of the week she can get some more information completed.

JR: When do we need stuff for VT then? AN: It should be within the next week or two, just have to salvage as much as possible, before September. JR: Shall we consider having the EC authorize Rose to work with Arthur? AC: So moved. GC seconded, and the motion carried unanimously, to authorize RK to work with AN to finalize a list of materials for Sunset review by VT. .

JR: anything else on NOP issues now? RK: Barbara, is AMS or USDA doing any impact research on the handling materials? Will we have any information by August? Or are we relying on industry for it? BR: Rose, the OMB requires, before rulemaking, that we do impact analysis, including for this type of court-ordered rulemaking. So we will have to do best we can. But, no, we won't have it by August. And no rules drafted by then either. We have an idea of estimates, based upon the size of industry sales at the retail level. I as an economist will start there, at the midpoint, cut in product, how the impact ripples back to the farm, and talking about the huge economic impacts certainly. But why do you ask?

RK: because before brainstorming, we always need real assumptions, real data. I'm nervous about choices of actions absent concrete information. As to materials, some were on because naturals were not economically feasible. I try not to be alarmist. I think Brian Baker has done some analysis of this based on cheaper vs. no real alternatives. So I would like to have more information from materials, from industry's aspect, how would the made-with be affected, and so on. I'm just so reluctant to go into rule making in an alarmist mode without more solid information.

BR: The simplest way is to eliminate synthetics totally -- in all processed products. Quick. But painful. But it is one solution. But first, we do need to identify the parameters of the problem we are looking at including who wants what to happen? First, we need to do that to describe the problem we face, and lay out what are each of the possible outcomes.

KO: in part of the process you are going through, things like vitamins that are required by law in certain instances, are synthetic -- but allowed, in fact required. BR: Yes, and that is one of the things we do want to examine carefully. In the court language, synthetic may be allowed "as authorized by other statutes" and that is one of the things we need to consider. We need to examine the national list, the implementing regulations, authorizing statutes, what items are included on the list, whether any are in fact required under any other laws and statutes, and what are the other mandates, the guideposts and so forth. For example, we won't let you trip up on health or safety requirements, nor would we recommend that you violate sound nutritional objectives for example, say something that is not only good GMP but common sense or required nutrition wise, i.e., folic acid fortification or enrichment, for example.

KO: there are also some specifics in CFR that require that if it is a comparable product to another standard in the industry it cannot be produced in a nutritionally inferior form BR right, so those are the kinds of things we need to consider and analyze carefully. But to echo RK, we absolutely need to not be alarmist. Approach this seriously, but have a full view. Then, on the flip side, several years have passed since several of these materials were first listed, and maybe there are a number of items on the list for the purpose, the use, but only one being the only one necessary today, several years later. But we don't yet know that yet, at this stage. What are the boundaries, the ag vs. non-ag, the contact substances, where do these things fit? So we really need to sit down together. What we do now has to last. We do not want more problems, more lawsuits. We want good credibility and trust with consumers and producers, and labels that mean something. In fact, I'm wondering, whether maybe we need to build in one full day for meeting and working on this together. (discussion ensued)

JR, I agree that looking at the one year time frame it means we have hard work and must focus. The draft I put out for the Aug meeting does not contemplate this, especially the extra time. KO: but you listed chair reports Jim – and how can we even move forward on some of those without this other stuff being covered first? BR: Right, and frankly the August agenda needs to be choreographed tightly. I feel some of the agenda items could be put off for a later date.

JR: we talked about meeting August 15 through 18 originally – is that date, the 18th, still a possibility ? (discussion) KJ: This is a very good discussion. We just need to determine a compelling game plan, and to reassure all parties of our seriousness in addressing this, conceptually and getting down to the hard work. AN: it also coincides with the handling committee work. It is difficult not to get bogged down in the weeds, slogging through, but by engaging the public as fully as possible, including their input, we get more likelihood of better progress and buying-into the decisions.

BR: it would be foolish for the department to act without this sensitivity. KO there is a huge concern on the part of the public that this happen right, that's for certain. (Note: BR had to leave the call. But she will contact the EC within a week or two, after further thought).

KB: Whatever you decide, I need to know by the end of call today if there is a change, in order to check with hotel availability for an added day.

5. Review of Agenda for August Meeting:

JR: turning then to the proposed August agenda, which you have received, there are now two hours, 8:00 a.m. to 10:00 a.m. for committee meetings. Some may not need to meet. I need to know now which do need meetings so we can work it out. KO: Handling Committee will need some of that time definitely. RK: I'm speaking for NO, and I am sure Crops would need time. DC: PDC will need time as well. AC: I will try to avoid having the AC meet, so members of that committee can be freed to handle other issues.

JR: I think the same thing is true for Livestock Committee; we should not need to meet at the August meeting. Since GS is not on the call, I will double check with him.

The time period from 10: 30 to 12:00 noon is for internal business. The NOP report has one hour, right before lunch. That is the time to set the stage for some of outcomes from the judge's final ruling.

RK: I think we need an hour for other reporting from NOP. Instead of going into the lawsuit report they need to give reports on sunset and other dockets. We could bog down once the lawsuit report starts. JR I agree, this is not the time for a substantive discussion, but is a good time for all the other stuff for the public at that time. Then, the public comments after lunch, from 1:00 to 4:00 p.m. Normally we don't cut off public comments, so it may go over; we never know for sure till sign-ups. Then, the rest of the first day is set aside for discussing items, not voting on them, so for follow-through on existing items and things that are in process but not ready for prime time.

Committee Reports at August Meeting:

KO: you have the task force update stuff? Is that from committee chairs or NOP? We are on there only overseeing activity, and we need to clarify who is doing that. JR: I envision just mentioning that the TF's are formed and have been meeting. At the August meeting there should not be anything to report back. So, yes, the committee chairs would handle that brief report.

JR: Dave, what I have down is for you to do an update on the NOSB Executive Director, where things stand on the issue of temporary variances, for research, and the criteria for commercial availability. Research is with crops and commercial availability is with handling. I don't anticipate a final action from either committee by August, but just a brief report of progress. GS is not here, but was on the livestock call two days ago. These are all topics remaining on work plans, work is under way, but no final action anticipated.

AC: You listed on number five, under livestock, the topic of Avian Influenza. What is that about? JR: NO brought this up this week, because of public comment from the poultry man that spoke at the last board meeting, you will recall, asking what the organic industry is going to do about AI. Therefore, NO will do a short discussion paper, basically to demonstrate it is not being ignored, and is on our screen. RK: I just wonder though, it is handled state by state, and although we are aware of and sympathetic to the issue, usually it is a state regulatory body that acts, and OFPA allows for "no outdoor access" as needed. JR I think basically NO will take that approach, and make that point. But no vote, no action.

JR: Kevin, regarding handling? KO: substances on 605 b, we have done nothing on that, -- it is in process still, with synthetic v non synthetic. Do you still want to leave it listed, just as a place holder? JR: well it is not much of a report, but it was on the work plan. KO: The materials/handling committees, listed here as number three -- that is just not relevant. JR I don't agree, but I've noted, KO says there is nothing to report. So, just keep it on the work plan, and cover it then during the work plan report, at end of the meeting. And when I re-do the agenda after today's meeting, the revised agenda will reflect that change.

KO: Keith, I understand that now, because of Harvey, the fenceposts set by NOP re jurisdiction (food contact substances) now are moving once again. You need to rewrite the

regulations, and it will apply to synthetics and uses of synthetics in organic, right? KJ: I think it all depends upon how NOP/NOSB really wrestles with it, the part that says not authorized by certain provisions. That is precisely what BR was thinking about because we need a long and in depth conversation. I know we don't want to be seen as trying to circumvent the court's order, nor to explain to the public in the marketplace that now broccoli would have to be "made with" because of it's having had a chlorine wash. So, food contact substances, is necessarily coming up in our need to wrestle with the meaning of the court order. (discussion) KO: right, and boiler water chemicals are on the table again, so we are back to square one. So, I see, we will keep item #3 but keep it on the work plan report, but no discussion.

RK: I suggest a sunset report from all three committees needs be included under my materials report. (discussion) JR: Rose, can you do that report, after you and Arthur work on it? RK: yes, fine.

Compost/crops: RK: I talked to Eric Sideman, and since the only things voted on were recommendation and report, Eric thinks we should take the recommendations out. In Eric's opinion, if those two items appear he said he would actually pull out the recommendations of those two reports and have NOSB vote on them. (discussion). RK: Eric says he feels it would be the best way, to show the language, as it was voted on by the NOSB, and there is no need to plow through the lengthy recommendations. I can understand that. It is an action, and will be voted on under Crops.

Accreditation Committee: AC: There is nothing. We should have it all completed and ready for a vote. But with the final court ruling coming down, is there need for discussion for work to be done? I can't think far enough ahead to know if we should be generating any specific work to help the transition. JR: There may be a need on the 606 issue, because of major change for certifiers, on commercial availability. It will be much simpler for them though. AC: So, we should address perhaps the renewal. I'm not sure if we need to do anything.

KJ: I think changes to 606 just are clarifications that move certifiers understanding to materials that could be deemed not commercially available to 606. Certifiers have two years to bring clients into compliance under the list. We have not received one single complaint re any misunderstanding of application of 606 and argued that strongly in our pleadings. So not going to go through a long explanation of 606, but just to state what it now means, and that is has to shift within two years.

JR: Once NOP has put out the notice to certifiers it is wise for our committee to monitor, but we will not list it as an item now – so no work yet. AC: okay.

Policy Committee: DC: There are significant revisions to the board policy manual. (Bea James: I will send the revisions to you Jim, by e-mail.) JR: okay, I'll merge and include the chemistry 101 material too then.

JR: I will circulate the second draft of the NOSB statement on the ANSI audit to the AC later today also. AC: good, I'll note that for the committee meeting next time.

JR: And for livestock, the pasture recommendation for final action, and sucrose octonate esters for use in agriculture, nothing else for a vote from livestock then. Now Handling, Kevin are there any changes? KO: yes, the first action, synthetic v non synthetic, that is Materials/Handling jointly. And Rose did most of the work on the preliminary draft. JR: shall I move it to her for presenting? (discussion – and agreed,)

KO: we need that discussion closely around agricultural vs non agricultural. But keep it under handling – (discussion – agreed, Rose will handle it in the materials report)

Materials Committee: RK: jumping to handling, Kevin with agricultural v non agricultural, KO will be ready by July 15 and the yeast issue may be covered in ag v non ag documents. We are on track for both those. And as far as I know, Arthur, there are no other handling substances to be covered for this meeting so you can just remove item #4 Regarding item #3 as a separate item – it should be covered under item #2 shouldn't it? KO: Right, Rose, it will be. RK: not petitioned per se, just a letter, we did not go through a materials process, just a notification. And the message will come across, but should not take action minus a petition. (discussion - JR will delete it as an item, delete yeast as item for action, inappropriate as discussed)

RK: revised petitions, one presented as a discussion item in fall 2004, and revisions made, and discussed in March, but no final action. I'll have to review the document and then put it on there.—but we have the whole new process now – and I'm not sure – between when I looked at the notice, and today, we now have the contractors working on different contracts. Arthur, you wanted us to revise submissions, to change it as we are working up-front, right? You asked us to look at prior to new contractors coming on and we presented revised notice, and when we met with contractors – Jim and I – there was a lot of discussion about front-loading the petition so as to get more information from the petitioner. Now I'm not sure we are reflecting Arthur's needs today. AN: Right, don't work on the notice before we know how we will approach the commercial availability issue because it is core. JR: also we need information for the synthetic substances for foods. (discussion -- and that item is removed from an action to a discussion item)

RK: For internal procedures for substances on the list, the FRN will inform it a bit, but we have not finalized our own procedures for how to handle it I don't think. And we need to do that. It has been assumed that we are going to get, that there are certain things to be abbreviated, like the technical review maybe. I assumed a similar review sheet – but it is a question. So I don't know if we can vote on it. I need to think about it and get something done in the next week or two -- so let's keep it on the agenda for now and see.

JR: I decided to move it to before Kevin's, do the Sunset first, and then it flows right into Kevin's report.

RK: The only other document that is important -- if the board agrees – is that, remember back in the November meeting, it was that list, that reconfiguration of the list by categories -- and we never voted on the concept and trying to change the list the way it reads in the

regulations. AN: It's important for lots of issues crops/livestock – in whole things, so for example, in aquatic plant extracts, the substance needs to be listed, but not the extracts.

RK: right, so if we go back to the document, and revise it a bit, and vote on it – conceptually it is important for leaving that in place for the new board – to take action before we leave the board -- because it could be lost. JR: so Rose, you would turn this into a vote, not a discussion? RK: Yes, we need to have it as a vote. We have to recommend it for Arthur, for the NOP, to decide then for rulemaking to reconfigure etc., -- you need us to act on it first. AN: Yes, and we also need to evaluate it against section 6517 of the regulations, because of the argument of the PH adjusters, and what your proposal tried to address was the production issue, where they fit.

Crops: JR: Rose, do we need to vote on Soy Protein Isolate? RK: if it gets endorsement, the issue with the SPI is we need to vote on the synthetics vs non synthetics before the committee can vote on it. It turns on how we define synthetic vs non synthetic. So we first need a vote by the board as to universal definitions. (So it is an action item). JR: What about ammonium bicarbonate? RK: Okay, yes. JR: also chitosan? And sucrose esters for crops? And lime mud maybe? (discussion followed – and decided, yes, action items for those as well).

Organic Feed, Commercial Feed Availability and Natural Resources:

RK: Nancy has requested that I work on the CA for feed. JR: Okay. And Natural Resources is moving forward and think that will be ready for a vote on that.

JR: moving into day three then, work on Harvey game plan. There is also time to continue from the previous day if needed, but also a block of time to finish the discussion as BR suggested. KJ: indicate it as implications of Harvey v. Johannis – and just do it head-on. AN: we can work together to put structure around it. But for now it is a place holder.

RK: so in the past we schedule one day to present, and the next day to vote. JR: yes, but this time, where we have those voting items, if we can vote, on any drafts ready for action, that is the most focused and efficient. But if we need to hold something over to the next day, we could do that. So now it is: 1:00 to 2:30 for public input. Then the work plans, and closing remarks and adjournment. Does the committee think we need to schedule in more time Wednesday for public input?

RK: last time there was a great deal of public comment, mostly all of it on the pasture issue. Do we foresee as much again? (discussion – general agreement to add an extra hour for comments, and adjourn at 5:00 p.m. Wednesday). JR: Are there any other changes? (none) Then I will make the changes in the agenda as we've agreed, recirculate it to the whole board, and then to AN for final polishing before posting. Bea James: So we are not considering extending to Thursday then? JR: No, we won't need the extra day. Any more items chairs? (none)

6. Next EC Meeting: July 14, 11 a.m. EDT.

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7. Adjourn: AC moved to adjourn, GC seconded, EC unanimously voted to adjourn at 4:50 EDT.

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(Today's agenda, below)

EXECUTIVE COMMITTEE CONFERENCE CALL

June 16, 2005 - 3:00 – 4:30 pm EDT

Leader: Arthur Neal

1. Call To Order: Jim Riddle, Chair
2. Review and Approve Agenda
3. Announcements - All
4. Secretary's Report – Goldie
 - a. Review and approve EC minutes from May meeting.
5. Chair Report – Jim
6. NOP Issues/Update – Barbara, Arthur
 - a. Work plan to address Harvey v Johanns rulings
 - b. Federal Register notices
 - c. Other
7. Review and approve draft agenda for August NOSB meeting - Jim
8. Committee Chair Reports – Updates on work plans
 - a. Policy Development – Dave
 - b. Crops – Nancy
 - c. Livestock – George
 - d. Handling – Kevin
 - e. Materials – Rose
 - f. Accreditation/Compliance – Andrea

9. Other Business

10. Next EC Meeting

11. Adjourn